

No. 1-10-0214

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FIFTH DIVISION
JUNE 30, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re WILLIAM G. A MINOR.
(THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the
) Circuit Court of
) Cook County.
)
v.) No. 07 JD 60776
)
(THE COUNTY OF COOK, Respondent-Appellant,)
v. WILLIAM G., Petitioner-Appellee).)
) Honorable
) Paul Stralka,
) Judge Presiding.

JUSTICE JOSEPH GORDON delivered the judgment of the court.
Justices Howse and Epstein concurred in the judgment.

O R D E R

Held: Order assessing costs to the County for the care and support of a dependent minor vacated where circuit court did not have subject matter jurisdiction over the dependency proceedings.

The County of Cook (County) appeals from an order of the circuit court of Cook County ordering it to pay Streamwood Behavioral Health System (Streamwood) \$35,482.04 for the care and support of minor-respondent William G. from July 11, 2009,

through August 23, 2009, pursuant to section 6-8 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/6-8 (West 2008)). On appeal, the County contends that this order is void for lack of subject matter jurisdiction, and that it is not liable for respondent's care and support for the designated period.

The record shows, in relevant part, that on September 10, 2007, the State filed a petition for adjudication of wardship alleging that respondent, a 15-year-old minor, was delinquent for having committed the misdemeanor offense of battery. 720 ILCS 5/12-3(a)(2), (b) (West 2006). Respondent pleaded not guilty to the charge, and the public defender was appointed to represent him. On April 29, 2008, the court ordered respondent taken into custody after being informed by his probation officer that he slapped a teacher.

A fitness examination was conducted, where respondent was found unfit to stand trial, but, with restorative services, he would become fit within one year. The court entered a finding of unfitness on May 21, 2008, and released respondent to his sister. On July 10, 2008, the court again found respondent unfit to stand trial and ordered him placed in the custody of the Illinois Department of Human Services (IDHS) for in-patient residential restorative services. Respondent was transferred to Streamwood Behavioral Health Center (Center) on July 23, 2008.

Thereafter, a report from Streamwood was presented to the court indicating that respondent was showing no progress, that he exhibited uncontrollable and unpredictable aggressive behavior, and that there was a substantial probability that he would never attain fitness. The court expressed its concern about releasing respondent from custody, and its desire to have him committed for mental health treatment. The case was then continued to July 10, 2009.

On that date, the court *sua sponte* declared respondent dependent, ordered his placement with the Illinois Department of Children and Family Services (DCFS), and remanded him to the Center. The court clarified for the record that respondent was no longer being held on the issue of fitness, and that the remand to the Center was pursuant to his being declared dependent. The case was then continued to July 20, 2009, when the court entered a written order *nunc pro tunc* to July 10, 2009, finding respondent to be a dependent minor, ordering DCFS to be notified of this status, and releasing respondent from the IDHS Forensic Program.

Meanwhile, defendant remained at the Center, and, on July 22, 2009, an attorney for Streamwood sent a letter to the Director of DCFS stating that no one from the agency had visited the Center to assess or take custody of respondent and that Streamwood's calls were not being returned. On July 28, 2009,

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the court amended its prior order, this time ordering DCFS to evaluate respondent and assess him for appropriate placement, and remanding respondent to the Center until the finalization of that assessment.

On August 6, 2009, the State filed a petition for adjudication of wardship and a motion for temporary custody alleging that respondent was dependent. A few days later, counsel for Streamwood informed the court that it was paying \$1500 per day to keep respondent at the Center, and the court responded that it did not think Streamwood should worry about not getting paid because the "county has an obligation." The court also stated that once DCFS took temporary custody, Streamwood would need to file a petition requesting the court to pay the costs. On August 24, 2009, DCFS was awarded temporary custody of respondent.

On September 2, 2009, Streamwood filed a petition for cost of care fees and expenses provided to respondent. Streamwood sought reimbursement of \$35,482.04 from the County for the cost of that care from July 11, 2009, through August 23, 2009, the period in which he had been released from the IDHS Forensic Program and before DCFS had been granted temporary legal custody. Streamwood gave in-court notice of the petition to the assistant State's Attorney, but failed to serve the president of the Cook County Board.

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On October 5, 2009, counsel for respondent filed a motion for an order for care and support of a minor seeking \$35,482.04 from the County to reimburse Streamwood for the mental health care provided to respondent, attached the earlier petition for costs filed by Streamwood, and served notice on the County. The County filed an objection to respondent's motion asserting, in relevant part, that the court did not have jurisdiction to order the County to pay for respondent's care and support, and that there was no legal basis to require the County to reimburse Streamwood where the record showed that respondent was eligible for discharge and was not provided a hearing under the Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5/1-100 *et seq.* (West 2006)).

At the hearing on respondent's motion, the court heard arguments from counsel for Streamwood, respondent, and the County. The court found that the County was liable for the care and support of respondent under section 6-8 of the Act (705 ILCS 405/6-8(1), (3)), and ordered the Cook County Treasurer to pay \$35,482.04 to Streamwood. In doing so, the court found that respondent was in County custody on July 23, 2008, based on the transportation order from the Juvenile Detention Center to Streamwood. The court found this fact particularly relevant in light of *Chicago Osteopathic Medical Centers v. City of Chicago*, 271 Ill. App. 3d 165, 177-78 (1995), where this court held the

County liable under the Act for juvenile detainees' medical expenses when police obtained medical treatment for them at a hospital pursuant to County policy before their actual, physical transfer into the custody of the County juvenile detention center. The court also noted that the charges in respondent's delinquency petition were still pending.

The County now challenges the propriety of that order. Ill. S. Ct. R. 304(a) (eff. Jan. 1, 2006). Streamwood has not filed a brief in response; however, we may consider the issues raised under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

The County contends that the order entered by the circuit court requiring it to pay Streamwood for the care and support of respondent during the designated period is void for lack of subject matter jurisdiction. A challenge to the subject matter jurisdiction of the circuit court is a legal question which we review *de novo*. *Millennium Park Joint Venture, LLC v. Houlihan*, No. 108923, slip op. at 9 (Ill. S. Ct. Dec. 23, 2010).

We initially observe that, in general, the circuit court has original jurisdiction of all justiciable matters. *In re Dontrell H.*, 382 Ill. App. 3d 612, 617 (2008), citing Ill. Const. 1970, art. VI, § 9. However, because a justiciable matter is statutorily derived, it may be defined by the legislature so as to limit or preclude the circuit court's authority. *In re A.H.*,

195 Ill. 2d 408, 416 (2001). In other words, when a court's power to act is controlled by statute, the court is governed by the rules of limited jurisdiction and must proceed within the strictures of the statute. *In re M.M.*, 156 Ill. 2d 53, 66 (1993). Thus, any action taken by the circuit court in excess of its jurisdiction is void and may be attacked at any time. *In re A.H.*, 195 Ill. 2d at 416, and cases cited therein.

In this case, the court obtained subject matter jurisdiction of respondent's delinquency proceedings when the State filed a petition for adjudication of wardship alleging him to be delinquent for committing the offense of battery. *In re Luis R.*, 239 Ill. 2d 295, 302-03 (2010). However, respondent was found unfit and then held in custody for one year, the time he would have served had he been found delinquent of battery. 720 ILCS 5/12-3(b), 5/2-11 (West 2006). At the conclusion of that year, no fitness hearing or discharge proceedings were held, and the court *sua sponte* declared respondent dependent after expressing its desire to keep him in treatment.

Under the Act, however, the court obtains subject matter jurisdiction over dependency proceedings involving minors when they are instituted in accordance with the provisions of Article 2 of the Act. 705 ILCS 405/2-1 (West 2006). That article authorizes any adult, agency, or association to file a dependency petition; or the court on its own motion, consistent with the

health, safety, and best interests of the minor, to direct the State's Attorney to file such a petition. 705 ILCS 405/2-13(1) (West 2006). The petitioner must allege that the minor is dependent and set forth, *inter alia*, facts sufficient to bring the minor within the definition of "dependent." 705 ILCS 405/2-13(2) (West 2006). In addition, the petitioner must allege that it is in the best interests of both the minor and the public for him to be adjudged a ward of the court. 705 ILCS 405/2-13(3) (West 2006).

Here, the circuit court acted contrary to these procedures when it *sua sponte* declared respondent to be dependent when no petition had been presented to that effect. As noted, the court's authority to declare respondent dependent was limited by the procedures outlined in the Act (*In re A.H.*, 195 Ill. 2d at 416), and, because the Act does not provide for a finding of dependency to be made *sua sponte*, the court exceeded its authority in doing so (*In re M.M.*, 156 Ill. 2d at 66). The record shows that no dependency petition had been filed in the case at that point, and, consequently, the court did not have subject matter jurisdiction to declare respondent a dependent minor. 705 ILCS 405/2-1; *In re A.H.*, 195 Ill. 2d at 416.

A similar conclusion was reached by the reviewing court in *In re E.F.*, 324 Ill. App. 3d 174 (2001). In that case, respondent was adjudicated delinquent, and, at sentencing, the

circuit court made a finding of neglect absent a pending neglect petition and placed him in the custody of DCFS. *In re E.F.*, 324 Ill. App. 3d at 175. The reviewing court found the custody award void for lack of subject matter jurisdiction because custody proceedings had not been initiated by the filing of a neglect petition, as required by the relevant statute, and that the circuit court could not exceed its authority under the Act no matter how beneficial or desirable the result. *In re E.F.*, 324 Ill. App. 3d at 176-77. We likewise find that, in this case, the circuit court exceeded its authority under the Act in making a *sua sponte* finding of dependency, notwithstanding any laudable motives.

Having so found, we consider the pecuniary order appealed from which followed the dependency adjudication. We observe that an order entered by a court lacking subject matter jurisdiction over the matter is void *ab initio*. *In re M.W.*, 232 Ill. 2d 408, 414 (2009). The record shows that on July 10, 2009, the court expressly stated that it was remanding respondent to the Center pursuant to his being declared dependent, and then later entered a written order *nunc pro tunc* to July 10, 2009, again finding respondent dependent and releasing him from the IDHS Forensic Program. The circuit court also ordered the County to pay Streamwood costs of \$35,482.04 for respondent's care and support from July 11, 2009, through August 23, 2009. Insofar as this

order assessing the County costs for respondent's remand to the Center finds its origin in the *sua sponte* finding of dependency made by the court, and that finding, as discussed above, did not confer subject matter jurisdiction on the court, we find the order assessing the County costs for that remand void *ab initio*. *In re M.W.*, 232 Ill. 2d at 414.

We also note that the circuit court's reliance on section 6-8 of the Act and *Chicago Osteopathic Medical Centers* is unavailing. Although section 6-8 authorizes the court to order the County to pay for the medical treatment of minors subject to the Act (705 ILCS 405/6-8 (West 2008)), the circuit court here expressly released respondent from County custody in July 2008 when it placed him in the custody of IDHS, and transferred him to the Center for restorative services. In this respect, the situation at bar is readily distinguishable from *Chicago Osteopathic*, 271 Ill. App. 3d at 177-78, where the County was found liable for medical expenses incurred for juvenile detainees who were awaiting the filing of charges against them, and brought to a hospital for medical clearance and/or treatment before being transported to the County juvenile authorities. Here, by contrast, where the court had transferred custody of respondent to IDHS, we do not believe that *Chicago Osteopathic* may be read to alter that status based on the transport order of July 23, 2008, or render the County liable under section 6-8 of the Act

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for the ensuing care and treatment provided to respondent under the intervening, invalid dependency order.

For the reasons stated, we reverse the order of the circuit court of Cook County assessing the County costs of \$35,482.04 for respondent's care and support from July 11, 2009, through August 23, 2009.

Reversed.